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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-525*

13 **CYNTHIA ANN MONTGOM COUNTS**  
14 **AKA CYNTHIA ANN COUNTS**

**ACCUSATION**

15 3800 Ave I, Apt. 201  
16 Birmingham, AL 35218

17 Registered Nurse License No. 372770  
18 Public Health Nurse Certificate No. 38186

Respondent.

19 Complainant alleges:

20 **PARTIES**

- 21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.
- 24 2. On or about June 30, 1984, the Board of Registered Nursing ("Board") issued  
25 Registered Nurse License Number 372770 to Cynthia Ann Montgom Counts aka Cynthia Ann  
26 Counts ("Respondent"). The Registered Nurse License was in full force and effect at all times  
27 relevant to the charges brought herein and will expire on March 31, 2014, unless renewed. On or  
28 about May 25, 1985, the Board issued Public Health Nurse Certificate No. 38186 to Respondent.

1 The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges  
2 brought herein and will expire on March 31, 2014, unless renewed.

3 **JURISDICTION AND STATUTORY PROVISIONS**

4 3. This Accusation is brought before the Board of Registered Nursing ("Board"),  
5 Department of Consumer Affairs, under the authority of the following laws. All section  
6 references are to the Business and Professions Code ("Code") unless otherwise indicated.

7 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline  
8 any licensee, including a licensee holding a temporary or an inactive license, for any reason  
9 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
11 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
12 disciplinary action during the period within which the license may be renewed, restored, reissued  
13 or reinstated.

14 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
16 licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code  
17 provides, in pertinent part, that the Board may renew an expired license at any time within eight  
18 years after the expiration.

19 7. Section 2761 of the Code states in pertinent part:

20 "The board may take disciplinary action against a certified or licensed  
21 nurse or deny an application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the  
23 following:

24 ...

25 (d) Violating or attempting to violate, directly or indirectly, or assisting  
26 in or abetting the violating of, or conspiring to violate any provision or term of this  
chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

27 ...

28 (f) Conviction of a felony or of any offense substantially related to the  
qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof."

1           8.     Section 490 of the Code states in pertinent part:

2                 “(a) In addition to any other action that a board is permitted to take  
3                 against a licensee, a board may suspend or revoke a license on the ground that the  
4                 licensee has been convicted of a crime, if the crime is substantially related to the  
5                 qualifications, functions, or duties of the business or profession for which the license  
6                 was issued.

7                 (b) Notwithstanding any other provision of law, a board may exercise any  
8                 authority to discipline a licensee for conviction of a crime that is independent of the  
9                 authority granted under subdivision (a) only if the crime is substantially related to the  
10                qualifications, functions, or duties of the business or profession for which the  
11                licensee's license was issued.

12               (c) A conviction within the meaning of this section means a plea or  
13               verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
14               a board is permitted to take following the establishment of a conviction may be taken  
15               when the time for appeal has elapsed, or the judgment of conviction has been  
16               affirmed on appeal, or when an order granting probation is made suspending the  
17               imposition of sentence, irrespective of a subsequent order under the provisions of  
18               Section 1203.4 of the Penal Code.”

19           9.     Section 2762 of the Code states:

20                 “In addition to other acts constituting unprofessional conduct within the  
21                 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
22                 person licensed under this chapter to do any of the following:

23                 ...

24                 (b) Use any controlled substance as defined in Division 10 (commencing  
25                 with Section 11000) of the Health and Safety Code, or any dangerous drug or  
26                 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
27                 in a manner dangerous or injurious to himself or herself, any other person, or the  
28                 public or to the extent that such use impairs his or her ability to conduct with safety to  
29                 the public the practice authorized by his or her license.

30                 (c) Be convicted of a criminal offense involving the prescription,  
31                 consumption, or self-administration of any of the substances described in  
32                 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
33                 record pertaining to, the substances described in subdivision (a) of this section, in  
34                 which event the record of the conviction is conclusive evidence thereof.”

### 35                                 REGULATORY PROVISIONS

36           10.    California Code of Regulations, title 16, section 1444, states:

37                 “A conviction or act shall be considered to be substantially related to the  
38                 qualifications, functions or duties of a registered nurse if to a substantial degree it  
39                 evidences the present or potential unfitness of a registered nurse to practice in a  
40                 manner consistent with the public health, safety, or welfare. Such convictions or acts  
41                 shall include but not be limited to the     following:

42                 (a) Assaultive or abusive conduct including, but not limited to, those  
43                 violations listed in subdivision (d) of Penal Code Section 11160.

- 1 (b) Failure to comply with any mandatory reporting requirements.  
2 (c) Theft, dishonesty, fraud, or deceit.  
3 (d) Any conviction or act subject to an order of registration pursuant to  
4 Section 290 of the Penal Code.”

5 **COST RECOVERY**

6 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
7 administrative law judge to direct a licensee found to have committed a violation or violations of  
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
9 enforcement of the case, with failure of the licensee to comply subjecting the license to not being  
10 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
11 included in a stipulated settlement.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Conviction of Substantially Related Crimes)**

14 12. Respondent is subject to disciplinary action under section 2761, subdivision (f) of the  
15 Code and section 490 of the Code in conjunction with California Code of Regulations title 16,  
16 section 1444 in that Respondent was convicted of crimes substantially related to the  
17 qualifications, functions and duties of a registered nurse, as follows:

18 13. On or about June 2, 2003, Respondent pled guilty to and was convicted of one  
19 misdemeanor count of violating Penal Code section 273d(a) [corporal injury to a child] in the  
20 criminal proceeding entitled *People of the State of California v. Cynthia Counts* (Super. Ct. of  
21 California, County of San Bernardino, San Bernardino District, 2003, Case No. FSB039346).  
22 The court ordered Respondent to serve 19 days in a San Bernardino County Jail Facility and  
23 placed Respondent on probation for a period of 48 months, with terms and conditions. The  
24 circumstances underlying the conviction are that on or about May 11, 2003, San Bernardino  
25 Police Department Officers (“Officers”) responded to a possible child abuse report. Officers  
26 observed swollen, raised welts and blood on the victim’s left arm. Officers observed that the  
27 welts were consistent with the width of a belt alleged to be the weapon used. Officers contacted  
28 Respondent regarding the incident and she made spontaneous statements that she hit her child for  
discipline.

14. On or about October 16, 2006, Respondent pled nolo contendere to and was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with 0.08% or more, by weight, of alcohol in his or her blood] in the criminal proceeding entitled *People of the State of California v. Cynthia Ann Montgomery Counts* (Super. Ct. of California, County of San Bernardino, San Bernardino District, 2006, Case No. TSB121143). The court placed Respondent on probation for 36 months, with terms and conditions. The circumstances underlying the conviction are that on or about June 27, 2006, at approximately 2337 hours, a San Bernardino Police Department Officer ("Officer") conducted a routine traffic stop on a vehicle driven by Respondent. The Officer observed Respondent's slow movements, slurred and lethargic speech and odor of alcoholic beverage emanating from her breath and/or person. Respondent admitted to drinking two four-ounce glasses of E&J Brandy approximately one hour prior. A Preliminary Alcohol Screening Device indicated that Respondent's blood alcohol level was 0.129%.

15. On or about May 29, 2009, Respondent was convicted of third degree forgery in the criminal proceeding entitled *State of Alabama v. Cynthia Counts* (Circuit Court of Jefferson County, Alabama, 2009, Case No. CC09-1179). The court placed Respondent on probation for 12 months.

## SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct)**

16. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the Code on the grounds of unprofessional conduct in that Respondent committed corporal injury to a child, drove a vehicle under the influence of alcohol and committed third degree forgery. The conduct is described in paragraphs 12 through 15 above, inclusive and hereby incorporated by reference.

### THIRD CAUSE FOR DISCIPLINE

**(Alcohol-Related Transgressions)**

17. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the Code as defined in section 2762, subdivision (b) of the Code in that Respondent used alcoholic

1 beverages to an extent or in a manner dangerous or injurious to herself, others or the public. The  
2 use is described in more particularity in paragraph 14 above, inclusive and hereby incorporated by  
3 reference.

4 18. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
5 Code as defined in section 2762, subdivision (c) of the Code in that Respondent was convicted of  
6 a criminal offense involving the consumption of alcoholic beverages. The conviction is described  
7 in more particularity in paragraph 14 above, inclusive and hereby incorporated by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violations of Nursing Practice Act)**

10 19. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the  
11 Code in that Respondent violated provisions of the Nursing Practice Act. The violations are  
12 described in more particularity in paragraphs 12 through 18 above, inclusive and hereby  
13 incorporated by reference.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 372770 and Public Health Nurse Certificate No. 38186, issued to Cynthia Ann Montgom Counts aka Cynthia Ann Counts;
2. Ordering Cynthia Ann Montgom Counts aka Cynthia Ann Counts to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: DECEMBER 24, 2012



for LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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